

**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

Name THOMPSON, JAMAL

(Last)

(First)

(Initial)

Prisoner Number H-19614

Institutional Address CTF/NORTH, PO BOX 705, SOLEDAD, CA  
93960-0705**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JAMAL THOMPSON

(Enter the full name of plaintiff in this action.)

vs.

BEN CURRY, WARDEN

CTF/NORTH FACILITY, SOLEDAD

(Enter the full name of respondent(s) or jailor in this action)

08

3834

Case No. CV 07-6420 PJH (PR)

(To be provided by the clerk of court)

**PETITION FOR A WRIT  
OF HABEAS CORPUS**

E-filing

(PR)

**Read Comments Carefully Before Filling In****When and Where to File**

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

PET. FOR WRIT OF HAB. CORPUS

08-3834 PJH

PJH 530

FILED  
AUG 11 2008  
RICHARD W. WILSON  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PJH

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

## 1. What sentence are you challenging in this petition?

- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

LOS ANGELES SUPERIOR COURT      LOS ANGELES COUNTY

Court

Location

- (b) Case number, if known BH003935
- (c) Date and terms of sentence 12-12-91, 15 to life, plus 2yrs.
- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.)      Yes X      No

Where?

Name of Institution: CORRECTIONAL TRAINING FACILITY

Address: PO BOX 705, SOLEDAD, CA 93960-0705

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

SECOND DEGREE MURDER, PENAL CODE §187, SUBD. 12022.5(a)



3. Did you have any of the following?

Arrestment: Yes X No       

Preliminary Hearing: Yes X No       

Motion to Suppress: Yes X No       

**4. How did you plead?**

Guilty \_\_\_\_\_ Not Guilty X Nolo Contendere \_\_\_\_\_

Any other plea (specify) \_\_\_\_\_

5. If you went to trial, what kind of trial did you have?

Jury X Judge alone \_\_\_\_\_ Judge alone on a transcript \_\_\_\_\_

6. Did you testify at your trial? Yes \_\_\_\_\_ No \_\_\_\_\_

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No           

(b) Preliminary hearing Yes X No \_\_\_\_\_

(c) Time of plea Yes X No       

(d) Trial Yes X No       

(e) Sentencing Yes X No       

(f) Appeal Yes X No       

(g) Other post-conviction proceeding Yes \_\_\_\_\_ No X

8. Did you appeal your conviction? Yes X No       

(a) If you did, to what court(s) did you appeal?

**Court of Appeal** Yes X No       

Year. 1992 Result: JUDGEMENT AFFIRMED

Supreme Court of California Yes X No       

Year: 1996 Result: DENIED

Any other court Yes \_\_\_\_\_ No X

Year: \_\_\_\_\_ Result: \_\_\_\_\_

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes \_\_\_\_\_ No X

(c) Was there an opinion? Yes \_\_\_\_\_ No X

(d) Did you seek permission to file a late appeal under Rule 31(a)?  
Yes \_\_\_\_\_ No X

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes X No \_\_\_\_\_

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: SUPERIOR COURT OF LOS ANGELES COUNTY

Type of Proceeding: PETITION FOR WRIT OF HABEAS CORPUS

Grounds raised (Be brief but specific):  
THE BOARD'S DISCRETION TO DETERMINE SUITABILITY

a. FOR PAROLE.

b. THE BOARD'S DISCRETION OF DETERMINATION WAS UNSUPPORTED BY EVIDENCE THAT WOULD BRING

PETITIONER'S CASE WITHIN THE TERMS OF PENAL

c. CODE § 3041.

d. \_\_\_\_\_

Result: DENIED Date of Result: FEB07

II. Name of Court: COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION FIVE.

Type of Proceeding: PETITION FOR WRIT OF HABEAS CORPUS

Grounds raised (Be brief but specific):



1 a. SAME AS ABOVE IN SECTION I. a-d

2 b. \_\_\_\_\_

3 c. \_\_\_\_\_

4 d. \_\_\_\_\_

5 Result: DENIED Date of Result: 17MAY07

6 III. Name of Court: SUPREME COURT OF CALIFORNIA

7 Type of Proceeding: PETITION FOR REVIEW

8 Grounds raised (Be brief but specific):

9 a. SAME AS ABOVE IN SECTION I. a-d

10 b. \_\_\_\_\_

11 c. \_\_\_\_\_

12 d. \_\_\_\_\_

13 Result: DENIED Date of Result: 08AUG07

14 IV. Name of Court: U.S. DISTRICT COURT, NORTHERN  
DISTRICT OF CALIFORNIA

15 Type of Proceeding: PETITION FOR WRIT OF HABEAS CORPUS

16 Grounds raised (Be brief but specific):

17 a. SAME AS ABOVE IN SECTION I. a-d

18 b. \_\_\_\_\_

19 c. \_\_\_\_\_

20 d. \_\_\_\_\_

21 Result: DISMISS W/OUT PREJUDICE Date of Result: 28FEB08

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes \_\_\_\_\_ No X

24 Name and location of court: \_\_\_\_\_

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to  
27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: "SEE ATTACHED SHEET"

6  
7 Supporting Facts:

8  
9  
10  
11 Claim Two: "SEE ATTACHED SHEET"

12  
13 Supporting Facts:

14  
15  
16  
17 Claim Three: "SEE ATTACHED SHEET"

18  
19 Supporting Facts:

20  
21  
22  
23 If any of these grounds was not previously presented to any other court, state briefly which  
24 grounds were not presented and why:

25 ALL GROUNDS PRESENTED HEREIN HAVE BEEN EXHAUSTED IN CALIFORNIA  
26 COURTS



1 "ATTACHED SHEETS"

2 STATEMENT OF FACTS

3 On or about October 27, 2005, Petitioner was denied parole for  
 4 4 years (next hearing date: 10/09.) by the Board of Prison  
 5 hearings, for the second consecutive time, based on the  
 6 commitment offense. The Board of Parole Hearings' (hereafter,  
 7 BPH)Repeated unsuitability determination based on the  
 8 circumstances of the commitment offense, violates Petitioner's  
 9 constitutional rights to due process under state and Federal law.  
 10 The record distinctly shows that the Petitioner is entitled by  
 11 statute and regulatory criteria, to a parole release date. In  
 12 spite of the preceding, the BPH has perpetually denied Petitioner  
 13 parole without any relevant material evidence to support its'  
 14 findings. According to statute "some evidence" has to exist in  
 15 order to substantiate the unsuitability determination. Clearly  
 16 the BPH has violated the spirits of Penal code §3041's plain  
 17 expressed language by an inaccurate misapplication of the some  
 18 evidence standard. The BPH's determination does not comply with  
 19 due process of law. And a review is necessary to determine  
 20 whether there exist a factual basis to support the unsuitability  
 21 determination in the record before the BPH. (In re Rosenkrantz,  
 22 29 Cal.4th at p.667, 128 Cal Rptr.2d 104, 59 P.3d 174.)

23 ' '

24 " "

25 " "

26 " "

27 " "

28 " "

1                    PETITIONER'S CONSTITUTIONAL CLAIMS

2                    I.

3            This Court's review is necessary to determine whether  
4            the decision of the Board of Parole hearings findings  
5            the Petitioner unsuitable for parole constituted an  
6            abuse of discretion and violation of Federal constitu-  
7            tional due process, insofar as the Board is alleged to  
8            have failed to render the decision consistent with it's  
9            burden of the proof, and insofar as the Board applied  
10           regulations that were not applicable to the Petitioner's  
11           offense.

12           The state court, in the Rosenkrantz case, and citing to In re  
13           Ramirez, 94 cal. App. 4th 549(2001), pointed out that the Board's  
14           practices should not operate so as to swallow the rule that  
15           parole os "normally" to be granted. rosenkrantz, 29 cal. 4th 683.  
16           Yet theBoard's practices of rarely, if ever, granting a future  
17           parole release date at an initial hearing, in fact does "swallow"  
18           "the rule" and nullifies the intent of the statue. This is a vio-  
19           of the separation of powers doctrine for the Executive branch to  
20           invade the Legislative branch and nullify a statue. However,  
21           Petitioner does not raise this as a claim here; he does allege  
22           that the failure of the Board to grant parole in a proper, non-  
23           pro forma manner violates his fundamental rights to due process  
24           of law.

25                    II .

26            This Court's review is urgently needed to settle import-  
27            ant questions about the interpretation of section 3041,  
28            Penal Code, by the Board of Parole Hearings that were  
29            not settled by the Court in the seminal case of In re  
30            Rosenkrantz (200) 29 cal. 4th 616.

31            As mentioned above, the statue (section 3041) contains clear  
32            and plain language that presumes entitlement to a parole release  
33            date "unless" the Board is able to produce evidence that the  
34            prisoner remains an unreasonable risk or danger to society.



(Penal Code, section 3041(a),(b); 15 CCR Div.2, §2402(a).) Both the federal court in McQuillion v. Duncan, 306 F.3d. 895, 901-903 and Biggs v. Terhune, 334 F.3d 910, and in the Rosen krantz case (29 cal. 4th 616), have recognized this presumption. Yet the state court has taken no position that the 99 percent parole denials are inconsistent with the plain language of the statue, except to say that the Board cannot operate in a fashion that allows the rule that parole is normally to be granted to be swallowed by the exception. (Rosenkrantz, at 683) The state court has done nothing to correct this overly-restrictive interpretation and application of the statue in the face of acknowledged 99 percent denials of parole even though it had the prime opportunity in the Rosenkrantz case to proscribe the overly-restrictive policies and practices of 99 percent denials as contrary to and an unreasonable application of the statue's presumption. this is clearly a violation of Federal and State rights to due process of law, and a 14th and 6th, US Constitutional amendment violation.

### III.

THIS COURT'S REVIEW IS NECESSARY TO SETTLE THE CON-  
AS TO WHETHER THE UNIFORM DETERMINATE SENTENCING ACT  
OF 1976 HAS ANY APPLICATION OR EFFECT ON PRISONERS  
WHOSE IMPRISONMENT IS PURSUANT TO SUBD.(b) OF SECTION  
1168, PENAL CODE, AND IF NOT, HAS IT'S APPLICATION VIO-  
LATED FEDERAL FUNDAMENTAL DUE PROCESS AND EQUAL PRO-  
TECTION RIGHTS IN THE PETITIONER'S CASE.

In 1982 case of In re Stanworth, 33 cal.3d 176, the court examined whether the application of "DSL" parole regulation to former "ISL" life prisoners violated ex post facto provisions. Because in some cases an ISL lifer might receive a benefit (In re Estrada (1967) 63 cal.2d 740, 745), the court ruled that the

1 Board must hold two parole hearings for ISL prisoners, one under  
2 the former ISL regulations, the other under the "DSL"  
3 regulations. In this decision, which formed the basis for  
4 subsequent decisions, the court implied that the DSL applied to  
5 former section 1168 "straight life" prisoners.

6 However, controlling decisional law provided that parole-  
7 setting by mechanical, categorical, tit-for-tat formula of  
8 punishment that current post-1977 regulations operate by. (In re  
9 Stanley, 54 cal.app.4th 1030, 1037-1040 (1976), ptn reh denied; (  
10 In re Minnis, 7 cal.3d 639(1972).) Because the shift in emphasis  
11 from rehabilitation to punishment by the enactment of the  
12 provisions of section 1170 of the penal code cannot apply to  
13 indeterminately-sentenced prisoners whose release to parole is  
14 intrinsically a question of and emphasis on rehabilitation, as  
15 per the amendment of section 1168 to subd.(b) thereof the appli-  
16 cation of a punishment standard to such prisoners clearly  
17 federal standards of due process and equal protections of the  
18 14th, 6th, and 5th amendment to the United States Constitution.

19 " "

20 " "

21 " "

22 " "

23 " "

24 " "

25 " "

26 " "

27 " "

28 " "



1 List, by name and citation only, any cases that you think are close factually to yours so that they  
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning  
3 of these cases:

4 MCQUILLION V. DUNCAN, 306 F.3d 895 (9th Cir.) MCQUILLION V.  
5 DUNCAN, 235 F.Supp.2d 1131 (C.D.Cal.2003). In re Dannenberg,  
6 S111029. In re RAMIREZ (2001) 94 Cal.App.4th 549, 570; BIGGS V.  
7 TERHUNE et al., 9th Cir. No. 02-15881, DJAR 7245.

7 Do you have an attorney for this petition?

Yes \_\_\_\_\_ No X

8 If you do, give the name and address of your attorney:

9 \_\_\_\_\_  
10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in  
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12  
13 Executed on August 3, 2008

14 Date

Samuel Thompson  
Signature of Petitioner

15  
16  
17  
18  
19  
20 (Rev. 6/02)

**PROOF OF SERVICE BY MAIL  
BY PERSON IN STATE CUSTODY**  
(C.C.P. §§ 1013(A), 2015,5)

I, Jamal Thompson, declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

Jamal Thompson, CDCR #: H-19614  
CORRECTIONAL TRAINING FACILITY  
P.O. BOX 705 . CELL #: LA-321 Upper  
SOLEDAD, CA 93960-0689.

On August 3, 2008, I served the attached:

First Amended Petition

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

Office Of The Attorney General  
Jerry Brown  
455 Golden Gate Ave Suite 11000  
San Francisco, California 94102

Clerk Of The U.S. District Court  
Northern District Of California  
450 Golden Gate Ave  
Post Office Box - 36060  
San Francisco, California 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 3, 2008.

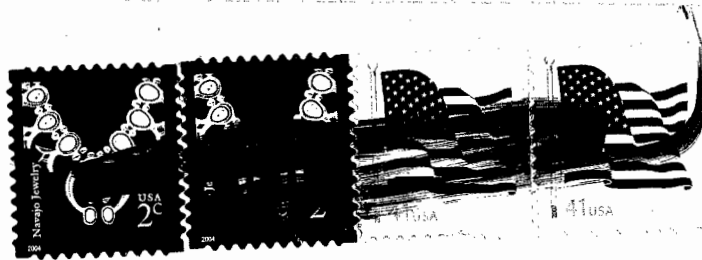
Jamal Thompson  
Jamal Thompson  
Declarant



JAMAL THOMPSON, CDC#H-19614  
CTF/NORTH FACILITY LA 321 UPPER  
PO BOX 705  
SOLEDAD, CA 93960-0705

CL  
NORTH

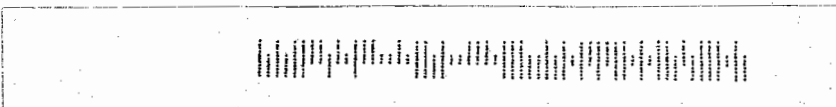
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AUG 6 2008

2008  
THOMAS W. WIEKING  
U.S. DISTRICT COURT  
DISTRICT OF CALIFORNIA

THE U.S. DISTRICT COURT  
DISTRICT OF CALIFORNIA  
DEN GATE AVE.  
86060  
CISCO, CALIFORNIA 94102







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